

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
FORT WAYNE DIVISION

CONDRA SMITH,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No 1:20-CV-00474
	)	
UNITED STATES DEPARTMENT OF	)	
EDUCATION, et al,	)	
	)	
Defendant.	)	

**DEFENDANT UNITED STATES DEPARTMENT OF  
EDUCATION'S RESPONSE TO PLAINTIFF'S MOTION FOR  
REMAND**

On November 12, 2020, Plaintiff filed her Complaint and Demand for Jury Trial in the Allen Superior Court against the United States Department of Education ("Education") and the other named defendants in the caption. Plaintiff's Complaint alleges claims for fraud and conversion related to the garnishment of Plaintiff's wages following Plaintiff's default on her student loans. (Dkt. #3). Among other things, Plaintiff alleges that the underlying loan was obtained fraudulently and is not her loan obligation.

On December 17, 2020, the United States, filed its Notice of Removal, pursuant to 28 U.S.C. § 1442(a)(1), to remove Plaintiff's most recent Complaint from the Allen Superior Court to the Northern District of Indiana. (Dkt. #1).

The United States removed this case solely under 28 U.S.C. § 1442(a)(1) because it was filed against an agency of the United States.

On December 29, 2020, Plaintiff filed her Motion for Remand and Memorandum in Support of Motion to Remand complaining that all defendants did not join in and consent to the removal. (Dkt. #7). Plaintiff's motion for remand is based upon the mistaken belief that 28 U.S.C. § 1446(b)(2)(A), which requires that all defendants named in the complaint must join in or consent to the removal, applied to the United States removal made pursuant to 28 U.S.C. § 1442(a)(1).

Section 1446(b)(2)(A) clearly states that the consent requirement applies only to removals made solely under section 1441(a). The United States has removed this case under 28 U.S.C. § 1442(a)(1) because plaintiff filed her case against a Federal agency, the "United States Department of Education". Removal under section 1442(a)(1) is interpreted "broadly in favor of removal". *Durham v. Lockheed Martin Corp.*, 445 F.3d 1018, 1021 (9th Cir. 2004). Unlike other removal statutes, removal under section 1442 does not require that all defendants must give their consent to removal. See, *Cabalce v. Thomas E. Blanchard & Assocs., Inc.* 797 F.3d 720 (9<sup>th</sup> Cir. 2015) ("[U]nlike the other removal statutes, under § 1442 not all defendants need join in a notice of removal. See, *Ely Valley Mines, Inc. v. Hartford Accident & Indem. Co.*, 644 F.2d 1310, 1315 (9<sup>th</sup> Cir. 1981) ("[Section) 1442 represents an exception to the

general rule (under § § 1441 and 1446) that all defendants must join in the removal petition.”)); and *O’Callaghan v. United States*, 686 F. Supp. 2d 826,828 ( N.D.Ill. 2010)( “[A] literal reading of Section 1442 permits removal by the United States without the consent of all defendants.”). Given the independent authority for removal under 28 U.S.C. § 1442, Plaintiff’s remaining arguments regarding diversity and federal question jurisdiction have no impact on the issue of remand.

Because the United States removed this complaint filed against Education under 28 U.S.C. § 1442, the other named defendants in Plaintiff’s complaint did not have to join in and consent to the removal, and the court must deny Plaintiff’s motion for remand of this case.

Respectfully submitted,

GARY T. BELL  
ACTING UNITED STATES ATTORNEY

By: s/Deborah M. Leonard  
Deborah M. Leonard  
Assistant United States Attorney  
E. Ross Adair Federal Building & U.S.  
1300 South Harrison Street, Room 3128  
Fort Wayne, IN 46802-3489  
Telephone: (260) 422-2595  
Facsimile: (260) 426-1616  
Email: [deborah.leonard@usdoj.gov](mailto:deborah.leonard@usdoj.gov)

**CERTIFICATE OF SERVICE**

I hereby certify that on the 26<sup>th</sup> day of January, 2021, the **DEFENDANT**  
**UNITED STATES DEPARTMENT OF EDUCATION'S RESPONSE TO**  
**PLAINTIFF'S MOTION FOR REMAND** was electronically filed with the  
Clerk of the Court using the CM/ECF system and a copy of the foregoing was  
served by United States Mail, postage prepaid to the following:

Condra L. Smith  
3301 Lafayette St.  
Fort Wayne, IN 46806

Pro-Se Plaintiff

s/ Teresa M. Dillner  
Teresa M. Dillner  
Legal Assistant, Civil Division

OFFICE OF:  
United States Attorney  
5400 Federal Plaza, Suite 1500  
Hammond, IN 46320  
Tel: (219) 937-5500  
Fax: (219) 852-2770